

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Capstar Radio Operating Company
Licensee of station KIXW-AM
Registered Owner of ASR Number 1018351
Apple Valley, California

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File Number EB-02-LA-225
NAL/Acct. No. 200332900001
FRN 0005-7937-16

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 30, 2002

By the Enforcement Bureau, Los Angeles Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Capstar Radio Operating Company ("Capstar"), the registered owner of Antenna Structure Registration ("ASR") number 1018351 in Apple Valley, California apparently willfully and repeatedly violated Sections 17.4(g) and 17.57 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations ("Rules") by failing to display the antenna structure registration number near the base of the antenna structure and by failing to notify the Commission of a change in ownership information.¹ We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Capstar is apparently liable for forfeiture in the amount of five thousand dollars (\$5,000).

II. BACKGROUND

2. On June 5, 2002, agents from the FCC Enforcement Bureau's Los Angeles Field Office inspected the tower used by Capstar for station KIXW-AM in Apple Valley, California. According to the ASR for the tower, painting and lighting must be maintained on the structure in accordance with FAA Circular Number 70/7460-1J, chapters 3, 4, 5 and 13. These requirements include red lights at night, and aviation orange and white paint for daytime marking. At the time of the inspection on June 5, 2002, the FCC's ASR database listed Ruby Broadcasting, Inc., as the registered owner of the antenna structure number 1018351.

3. On June 5, 2002, no ASR number was displayed at the base of the tower. The antenna structure had been painted with seven bands of orange and white paint, however the paint was faded, chipped and peeling, and oxidized. The fencing at the base of the uni-pole tower was in disrepair, with the northwest corner post loose and tilting over.

¹ 47 C.F.R. §§ 17.4(g) and 17.57.

² 47 U.S.C. § 503(b).

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and "repeated" means the commission or omission of the act more than once or for more than one day.³

5. Section 17.4(g) of the Rules states that the ASR number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. At the time of the inspection, the ASR number was not displayed.

6. Section 17.57 of the Rules requires antenna structure owners to immediately notify the Commission using FCC Form 854 upon any change in ownership information. At the time of the inspection, ASR number 1018351 was registered to Ruby Broadcasting, Inc. Capstar acquired ownership of this tower in September of 2000, yet as of June 5, 2002, Capstar had failed to notify the Commission of the change in ownership. On October 11, 2002, Capstar filed the required updated ownership information for the structure with the Commission.

7. Based on the evidence before us, we find that on June 5, 2002, Capstar failed to post the ASR number for the tower number 1018351, and failed to timely notify the Commission of the change in ownership of the structure in willful and repeated violation of Sections 17.4(g) and 17.57 of the Rules.

8. Section 17.50 of the Rules states that "[a]ntenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility." The Commission's antenna structure construction, marking and lighting requirements operate in concert with FAA regulations to ensure that antenna structures do not present hazards to air navigation. The ASR for structure 1018351 specifies aviation orange and white paint for daytime marking, in accordance with chapters 3, 4, 5, and 13 of FAA Circular 70/7460-1J. At the time of the inspection the paint bands on the tower were faded, chipped and peeling, and oxidized.

9. Section 73.49 of the Rules states in part that "[a]ntenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures." The antenna system on the structure is described on the license for station KIXW as a series-excited radiator. A "series excited" radiator may also be described as a "series fed" radiator. The AM transmission fencing requirements thus apply to this antenna structure. At the time of the inspection, the fencing at the base of the structure was in disrepair. Effective base

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act..." See *Southern California Broadcasting Co.*, 6 FCC Red 4387 (1991). Section 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

fencing is an important safety requirement. AM series-fed antenna structures radiate energy that renders any physical contact with the antenna structure itself extremely dangerous. In addition, AM antenna structures are capable of generating radio frequency fields at the base of the antenna structure that may exceed the Commission's maximum permissible exposure guidelines. Effective base fencing is thus important to prevent possible contact with the radiating structure and excessive radio frequency radiation exposure.

10. Failure to properly maintain required antenna structure marking and failure to properly maintain effective base fencing may result in imposition of a monetary forfeiture, pursuant to Section 1.80 of the Rules. Capstar must respond in writing with a statement of corrective action taken, or to be taken, to ensure ASR number 1018351 is in full compliance with the antenna structure marking and base fencing Rules.

11. Pursuant to Section 1.80(b)(4) of the Rules and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),⁴ the base forfeiture amount for failure to post the antenna structure registration number is \$2,000 and the base forfeiture amount for failure to file required forms or information is \$3,000.⁵ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 ("Act"), as amended, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Considering the entire record and applying the statutory factors listed above, a \$5,000 forfeiture is warranted.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Capstar Radio Operating Company, is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of five thousand dollars (\$5,000.00) for willful and repeated violation of Sections 17.4(g) and 17.57 of the Rules.⁷

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Capstar Radio Operating Company, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and the NAL/Acct. No. referenced in the caption.

⁴ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁵ 47 C.F.R. § 1.80(b)(4); *American Tower Corporation*, 16 FCC Rcd 1282 (2001) (\$2000 is an appropriate base forfeiture amount for failure to post the ASR).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80 and 17.4(g) and 17.57.

15. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and must include the FRN and NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, D.C. 20554.⁸

18. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729(June 28,2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

19. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Capstar Radio Operating Company, 2625 S. Memorial Drive, Suite A, Tulsa, OK 74129.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton
District Director, Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.